

8

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

JESUS SEDANO, } Case No. ED CV 13-2340-DFM  
Plaintiff, }  
v. }  
CAROLYN W. COLVIN, Acting }  
Commissioner of Social Security, }  
Defendant. }  
MEMORANDUM OPINION AND  
ORDER

Plaintiff Jesus Sedano (“Plaintiff”) appeals the decision of the Administrative Law Judge (“ALJ”) denying his application for Social Security disability benefits. The Court concludes that the ALJ’s assessment of Plaintiff’s residual functional capacity (“RFC”) is supported by substantial evidence and that the ALJ did not err in assessing Plaintiff’s credibility. The Court therefore affirms the ALJ’s decision.

I.

## FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed his application for benefits on December 8, 2010, alleging disability beginning June 4, 2010. In an unfavorable decision, the ALJ found that Plaintiff had the severe impairments of degenerative disc disease, status

1 post lumbar laminectomy at L4-5, and depression, but concluded that Plaintiff  
2 was not disabled because he could perform a range of sedentary work and such  
3 work was available in significant numbers in the national and regional  
4 economy. Administrative Record (“AR”) 15-20.

5 **II.**

6 **ISSUES PRESENTED**

7 The parties dispute whether (1) the ALJ’s RFC assessment is supported  
8 by substantial evidence; and (2) the ALJ properly assessed Plaintiff’s  
9 credibility. See Joint Stipulation (“JS”) at 3-4.

10 **III.**

11 **STANDARD OF REVIEW**

12 Under 42 U.S.C. § 405(g), a district court may review the  
13 Commissioner’s decision to deny benefits. The ALJ’s findings and decision  
14 should be upheld if they are free from legal error and are supported by  
15 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);  
16 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d  
17 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as  
18 a reasonable person might accept as adequate to support a conclusion.  
19 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th  
20 Cir. 2007). It is more than a scintilla, but less than a preponderance.  
21 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d  
22 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports  
23 a finding, the reviewing court “must review the administrative record as a  
24 whole, weighing both the evidence that supports and the evidence that detracts  
25 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720  
26 (9th Cir. 1996). “If the evidence can reasonably support either affirming or  
27 reversing,” the reviewing court “may not substitute its judgment” for that of  
28 the Commissioner. Id. at 720-21.

## IV.

# DISCUSSION

**A. The ALJ Properly Assessed Plaintiff's RFC**

Plaintiff contends that the ALJ's RFC assessment is not supported by substantial evidence because the ALJ did not consider all of his limitations and treatment, and the evidence showed a clear worsening of his underlying condition. JS at 4-12.

A claimant’s “residual functional capacity” is the most a claimant can still do despite his limitations. Smolen v. Chater, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. § 404.1545(a)). An ALJ will assess a claimant’s RFC based on all the relevant evidence of record and will consider all of the claimant’s medically determinable impairments, whether found to be severe or not. 20 C.F.R. § 404.1545(a)(2), (a)(3), (e). An RFC assessment is ultimately an administrative finding reserved to the Commissioner. 20 C.F.R. § 404.1527(d)(2). However, an RFC determination is based on all of the relevant evidence, including the diagnoses, treatment, observations, and opinions of medical sources, such as treating and examining physicians. *Id.*

A claimant for disability benefits bears the burden of producing evidence to demonstrate that he was disabled within the relevant time period. Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995). The existence of a severe impairment is demonstrated when the evidence establishes more than a minimal effect on an individual's ability to do basic work activities. Smolen, 80 F.3d at 1290; 20 C.F.R. § 404.1521(a). Furthermore, the mere existence of a condition is not *per se* disabling; rather there must be proof of the impairment's disabling severity. Sample v. Schweiker, 694 F.2d 639, 642-643 (9th Cir. 1982); 42 U.S.C. § 1382c(a)(3)(C)(I).

Here, Plaintiff has not meet his burden of showing that he has a disabling condition. The ALJ properly considered Plaintiff's testimony and

1 reviewed the medical evidence in detail in reaching his conclusion that Plaintiff  
2 retained the RFC to perform sedentary work with restrictions. See AR 15-18.  
3 Although Plaintiff complains that the ALJ did not sufficiently consider his  
4 “original” 2004 back surgery and his epidural injections, see JS at 5-7, the ALJ  
5 specifically discussed the pre-onset records, and noted that since the 2004  
6 lumbar laminectomy, Plaintiff continued to complain of back-related pain,  
7 decrease in flexion, difficulty squatting, and tenderness, “but was able to and  
8 continued to work following that surgery until 2010.” AR 16-17. This finding  
9 is supported by substantial evidence in the record. AR 29, 45, 115, 133, 139,  
10 156, 160, 207, 213.

11 Moreover, the record demonstrates that the ALJ gave Plaintiff the  
12 benefit of the doubt in determining that he was capable of only performing  
13 sedentary work. The ALJ considered the State Agency reviewing physicians  
14 who determined that Plaintiff was capable of performing a range of light work.  
15 AR 17 (citing AR 194-200, 204-05); see also AR 52, 55. While the ALJ agreed  
16 with those opinions to the extent they stated Plaintiff was capable of work, the  
17 ALJ assigned a more restrictive RFC after taking into account Plaintiff’s  
18 partially credible subjective complaints. AR 17-18. The ALJ also considered  
19 medical evidence from physicians involved in Plaintiff’s workers’  
20 compensation claim, but properly noted that conclusions in the context of  
21 workers’ compensation cases are not binding on Social Security Act  
22 determinations, and concluded that those reports ultimately were consistent  
23 with a determination that Plaintiff could work. AR 18; see Booth v. Barnhart,  
24 181 F. Supp. 2d 1099, 1104-1105 (C.D. Cal. 2002) (explaining that “[w]orkers’  
25 compensation disability ratings are not controlling in disability cases decided  
26 under the Social Security Act,” and that “[i]n analyzing medical opinions  
27 using state workers’ compensation terminology, the ALJ is entitled to draw  
28 inferences logically flowing from the evidence”) (internal quotations marks

1 omitted). Indeed, the workers' compensation physicians did not opine that  
2 Plaintiff was permanently totally disabled nor did they consider whether he  
3 could do other work. AR 161, 166, 170, 173, 215, 217.

4 Finally, Plaintiff contends that the ALJ committed reversible error by  
5 not taking into account his multi-level spinal fusion in 2012, which occurred  
6 shortly before the hearing, and by determining that it was a "new and  
7 separate" condition. JS 4-5, 7, 10-11. Here, the ALJ discussed the 2012 spinal  
8 fusion, noted that there was no evidence in the record documenting the  
9 surgery, and that, in any event, it did not meet the durational requirement for a  
10 severe impairment because it occurred less than 12 months prior to the date of  
11 the decision. AR 13. Moreover, as the ALJ pointed out, Plaintiff testified he  
12 was in less pain after the back surgery. AR 13, 42. As a result, the ALJ limited  
13 his discussion to what Plaintiff was capable of doing between the alleged  
14 disability onset date of June 2010 and his April 2012 back surgery. AR 13.  
15 While Plaintiff repeatedly states that the 2012 surgery is a result of his ongoing  
16 and "worsening" impairment, he fails to point to any evidence showing an  
17 inability to work or functional limitations after the 2012 back surgery. Plaintiff  
18 has thus failed to show that the ALJ erred in limiting review in the case to the  
19 time period between the alleged onset and the 2012 back surgery. See Hanning  
20 v. Astrue, No. 10-2037, 2011 WL 5119072, at \*8 (W.D. Wash. Aug. 31, 2011)  
21 (finding that although claimant's recent back surgery may be a basis for a new  
22 application, the ALJ did not err in failing to consider claimant's restricted  
23 mobility due to that back surgery where there was no evidence of the surgery  
24 in the record).

25 In sum, the Court finds that the ALJ properly synthesized the medical  
26 record and the conclusions of the reviewing physicians in assessing Plaintiff  
27 with an RFC for sedentary work with restrictions. The ALJ's RFC assessment  
28 was supported by substantial evidence in the record; therefore, Plaintiff is not

1 entitled to relief on this claim of error.

2 **B. The ALJ Properly Assessed Plaintiff's Credibility**

3 Plaintiff contends that the ALJ erred by failing to provide clear and  
 4 convincing reasons for discounting his subjective symptom testimony. JS at 18-  
 5 21. Plaintiff testified at the administrative hearing that he worked as a school  
 6 bus driver up to the last day of school in June 2010. AR 31. He remembered  
 7 that specific date because he told his supervisor “[t]he last school day is going  
 8 to be my last working day.” AR 31. He stopped working because he had pain  
 9 in his lower back and all the way down his left leg. AR 32. Up until his 2012  
 10 surgery he would spend his day sleeping, watching TV, and watching his son.  
 11 AR 35-36. He explained that if he needed help with his son, he would call his  
 12 brother. AR 39. He said he could walk for 10 or 15 minutes but would have to  
 13 stop because the pain was so horrible. AR 36. He explained how after walking  
 14 he would sit on the couch, get drowsy, and then go to the bedroom and sleep.  
 15 AR 36. He testified that the Soma and Norco medications made him drowsy  
 16 prior to the 2012 surgery. AR 37-38, 40-41.

17 To determine whether a claimant's testimony about subjective pain or  
 18 symptoms is credible, an ALJ must engage in a two-step analysis. Vasquez v.  
 19 Astrue, 572 F.3d 586, 591 (9th Cir. 2009) (citing Lingenfelter, 504 F.3d at  
 20 1035-36). First, the ALJ must determine whether the claimant has presented  
 21 objective medical evidence of an underlying impairment which could  
 22 reasonably be expected to produce the alleged pain or other symptoms.  
 23 Lingenfelter, 504 F.3d at 1036. “[O]nce the claimant produces objective  
 24 medical evidence of an underlying impairment, an adjudicator may not reject a  
 25 claimant's subjective complaints based solely on a lack of objective medical  
 26 evidence to fully corroborate the alleged severity of pain.” Bunnell v. Sullivan,  
 27 947 F.2d 341, 345 (9th Cir. 1991) (en banc). To the extent that an individual's  
 28 claims of functional limitations and restrictions due to alleged pain are

1 reasonably consistent with the objective medical evidence and other evidence,  
 2 the claimant's allegations will be credited. SSR 96-7p, 1996 WL 374186 at \*2  
 3 (explaining 20 C.F.R. § 404.1529(c)(4)).

4 If the claimant meets the first step and there is no affirmative evidence of  
 5 malingering, the ALJ must provide specific, clear and convincing reasons for  
 6 discrediting a claimant's complaints. Robbins, 466 F.3d at 883. "General  
 7 findings are insufficient; rather, the ALJ must identify what testimony is not  
 8 credible and what evidence undermines the claimant's complaints." Reddick,  
 9 157 F.3d at 722 (quoting Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1996)).  
 10 The ALJ must consider a claimant's work record, observations of medical  
 11 providers and third parties with knowledge of claimant's limitations,  
 12 aggravating factors, functional restrictions caused by symptoms, effects of  
 13 medication, and the claimant's daily activities. Smolen, 80 F.3d at 1283-84 &  
 14 n.8. The ALJ may also consider an unexplained failure to seek treatment or  
 15 follow a prescribed course of treatment and employ other ordinary techniques  
 16 of credibility evaluation. Id. (citations omitted).

17 The ALJ gave specific reasons for finding that Plaintiff's subjective  
 18 testimony was not entirely credible, each of which is fully supported by the  
 19 record. First, the ALJ noted that Plaintiff gave inconsistent testimony. For  
 20 example, Plaintiff testified he had to sleep four to five hours every time he took  
 21 his pain medication because of its side effects. AR 16, 40. The ALJ found this  
 22 implausible, however, because Plaintiff stated he took those medications every  
 23 six hours, which would have rendered him sleeping all day. AR 16, 37-42; see  
 24 also AR 210 (Plaintiff states in 2010 that he only sleeps two hours during the  
 25 day). Plaintiff also testified that he had been taking those medications at least  
 26 five years before his April 2012 surgery (or since 2007), yet continued to work  
 27 driving a school bus through June 2010. Further, despite his allegations that  
 28 his disabling pain precluded him from driving the school bus, he admitted he

1 continued to drive outside of work. AR 16, 42; see also AR 214. The ALJ  
 2 could rely on these inconsistencies. See, e.g., Tommasetti v. Astrue, 533 F.3d  
 3 1035, 1039 (9th Cir. 2008) (holding that ALJ may consider many factors in  
 4 weighing a claimant's credibility, including "ordinary techniques of credibility  
 5 evaluation, such as . . . testimony by the claimant that seems less than  
 6 candid"); Orteza v. Shalala, 50 F.3d 748, 750 (9th Cir. 1995) (ALJ may  
 7 properly rely on claimant's daily activities, including ability to drive); Fair v.  
 8 Bowen, 885 F.2d 597, 604 (9th Cir. 1989) (ALJ may properly rely on daily  
 9 activities inconsistent with claim of disabling pain, including claimant's ability  
 10 to take care of personal needs, shop, and drive).

11 The ALJ also determined that Plaintiff was not fully credible based upon  
 12 his conservative treatment history. For example, the ALJ noted that from 2009  
 13 to 2011, Plaintiff was treated for and diagnosed with post laminectomy,  
 14 lumbar discogenic disease, and degenerative disc disease. AR 17. However,  
 15 treatment at that time only consisted of physical therapy, epidural injections,  
 16 pain medications, muscle relaxants, and a discogram. Id. Moreover, Plaintiff  
 17 reported, including at the hearing, that medication relieved his pain. AR 37-38  
 18 (agreeing at hearing that "the Norco kills [my] pain"), 209 (Plaintiff reporting  
 19 in September 2010 that "[s]ymptoms are relieved with use of medication"); 254  
 20 (Plaintiff reporting in May 2011 he "feels better" on medication). Conservative  
 21 treatment history and responsiveness to medication are legitimate bases for an  
 22 ALJ to discount a claimant's credibility. See Tommasetti, 533 F.3d at 1039;  
 23 see also Fair, 885 F.2d at 604 (finding that the claimant's allegations of  
 24 persistent, severe pain and discomfort were belied by "minimal conservative  
 25 treatment"); Warre v. Comm'r Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th  
 26 Cir. 2006) ("Impairments that can be controlled effectively with medication are  
 27 not disabling for the purpose of determining eligibility for SSI benefits."))

28 ///

On appellate review, this Court does not reweigh the hearing evidence regarding Plaintiff's credibility. Rather, this Court is limited to determining whether the ALJ properly identified clear and convincing reasons for discrediting Plaintiff's credibility. Smolen, 80 F.3d at 1284. The written record reflects that the ALJ did just that. It is the responsibility of the ALJ to determine credibility and resolve conflicts or ambiguities in the evidence. Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). If the ALJ's findings are supported by substantial evidence, this Court may not engage in second-guessing. Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002).

V.

## CONCLUSION

For the reasons stated above, the decision of the Social Security Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

Dated: August 6, 2014

822 D

DOUGLAS F. McCORMICK  
United States Magistrate Judge